

1 JOHN L. BURRIS, ESQ. CSB#69888
2 LAW OFFICES OF JOHN L. BURRIS
3 Airport Corporate Centre
4 7677 Oakport Street, Suite 1120
5 Oakland, CA 94621-1939
6 Tel: (510) 839-5200
7 Fax: (510) 839-3882
8 E/M: John.Burris@JohnBurrisLaw.com

9 Attorneys for L.W., a minor (plaintiff)

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **(SAN FRANCISCO--OAKLAND)**

13 L.W., a minor, by and through his
14 guardian ad litem, Troyreac Henry,

15 Plaintiff,

16 vs

17 CITY OF OAKLAND, a municipal
18 corporation; BRIAN CLIFFORD, as an
19 individual and in his official capacity as
20 a CITY OF OAKLAND police officer;
21 and DOES 1 –25, inclusive,

22 Defendants.

CIVIL NO.

COMPLAINT FOR DAMAGES
(CIVIL RIGHTS VIOLATIONS)

JURY TRIAL DEMANDED

23 **JURISDICTION**

24 1. This action arises under Title 42 of the United States Code, Section
25 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.
26 Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Section
27 1331 and 1343. The Northern District is the proper venue in that all the acts
28 complained of occurred in the City of Oakland in the County of Alameda, which is

1 within this judicial district. Plaintiff requests the Court exercise jurisdiction over
2 pendent state claims and causes of action under Title 28 of the United States Code,
3 Section 1367. With respect to state causes of action, plaintiff has filed suit within the
4 time periods prescribed by California Government Code §§ 911.2 and 945.6. All
5 administrative requirements precedent to bringing suit against these defendants and
6 upon the causes of action set forth herein have been fulfilled.

8 PARTIES

9 2. Plaintiff L.W., a minor male, is, and at the time of the incident related
10 herein was, a natural person, a citizen of the United States, and a resident of the State
11 of California. Plaintiff L.W. brings this suit through his guardian ad litem, Troyreac
12 Henry.

13 3. Plaintiff alleges that CITY OF OAKLAND is a governmental entity
14 subject to suit pursuant to 42 U.S.C. § 1983 and Monell vs Dept. of Social Services,
15 436 U.S. 658 (1978).

16 4. Defendant BRIAN CLIFFORD and DOES 1 through 25 were at all
17 times mentioned herein employed by defendant CITY OF OAKLAND in the Oakland
18 Police Department. They are sued both in their official capacities as law enforcement
19 officers for the CITY OF OAKLAND and as individuals personally liable for their
20 own actions. In engaging in the conduct described herein, while said defendants acted
21 under the color of law in the course and scope of their employment, they exceeded the
22 authority vested in them by the United States Constitution and by the CITY OF
23 OAKLAND.

24 5. Plaintiff is ignorant of the names and capacities, whether individual,
25 corporate, associate, or otherwise, of defendants named herein, as DOES 1 through 25,
26
27
28

6. Plaintiff is informed and believe and hereon alleges that at all times mentioned, defendants, including those defendants sued as "DOE", and each of them, were the agents and employees of each of the other defendants, and in doing the things hereinafter alleged were acting within the scope of their authority as such agents and employees, and with the permission and consent of each other. The relationships between defendants were and are created by agreement, by ratification, by ostensible authority or otherwise, and this paragraph is not a limitation on the manner in which said relationships were created as a matter of fact or a matter of law.

7. Plaintiff hereby incorporates paragraphs 1 through 6 by reference, as though the allegations therein were realleged at length and in full.

8. On April 8, 2013, plaintiff L.W., along with friends, was walking in downtown Oakland. At approximately 10:30 p.m. they were walking in the direction of the Mexicali Rose restaurant and encountered persons not known to them who were intoxicated and belligerent. Plaintiff and his friends turned and were walking away when a CITY OF OAKLAND police officer, who was parked nearby in a patrol car, drove towards plaintiff and, exiting the car, aimed her firearm at plaintiff and told him

1 and his friends to “freeze”. Plaintiff and his friends complied but in short order,
2 additional patrol cars arrived. Soon, plaintiff and his friends, all minors, were faced
3 with numerous officers pointing firearms at them. No actions were taken by plaintiff
4 or his friends that threatened the officers. They were wearing light clothing and their
5 bare arms and hands were visible. The situation was fully controlled. At that point, an
6 officer who plaintiff is informed and believes was BRIAN CLIFFORD (“CLIFFORD”
7 or “Defendant”) arrived in a patrol, yelled at plaintiff and his friends to lie down on the
8 ground. He then shot at Plaintiff without lawful cause, placing Plaintiff in immediate
9 fear of death. Plaintiff was placed in handcuffs, taken to the hospital and subsequently
10 booked into jail. He was released the next day without being charged with any offense.

11 DAMAGES

12
13
14 9. Plaintiff sustained severe emotional distress and trauma with flashbacks
15 to the incident as a proximate result of being shot at and seeing one of his friends shot
16 in the face on that occasion by CLIFFORD. As a proximate result of defendants'
17 conduct, and each of them, plaintiff suffered severe emotional distress, anxiety,
18 embarrassment, and loss of his sense of security, dignity, and pride as an African-
19 American as a result of the unlawful detention and arrest, and unlawful use of force.
20 The conduct of defendant CLIFFORD, and DOES 1-25, was malicious, oppressive and
21 grossly reckless, warranting punitive damages. Plaintiff seeks recovery of those
22 damages in addition to general damages.

23
24 10. Plaintiff found it necessary to engage the services of private counsel to
25 vindicate his rights under the law and is therefore entitled to an award of all attorneys'
26 fees incurred in relation to this action for violation of his civil rights.
27
28

1 FIRST CAUSE OF ACTION
2 Violation of 42 U.S.C. § 1983
(CLIFFORD and DOES 1 – 25)

3 11. Plaintiff hereby incorporates paragraphs 1 through 10 by reference, as
4 though fully set forth herein.

5 12. In doing the acts complained of herein, defendants acted under color of
6 law to deprive plaintiff of certain constitutionally protected rights, including, but not
7 limited to the right not to be deprived of liberty without due process of law and the
8 right to be free from unlawful seizure, including excessive or wrongful use of force.

9 13. As a proximate result of defendants' wrongful conduct, plaintiff suffered
10 injuries and damages as set forth herein.

11 WHEREFORE, Plaintiff prays for relief as set forth herein.

12 SECOND CAUSE OF ACTION
13 Assault and Battery
14 (CLIFFORD and DOES 1 – 25)

15 14. Plaintiff hereby incorporates paragraphs 1 through 13 by reference as
16 though fully set forth.

17 15. Defendants committed assault and battery upon the person of Plaintiff
18 by aiming firearms at him and behaving in a manner that made him fear of imminent
19 death or great bodily injury, through their unwarranted use of force, shooting at him
20 and his friends and placing him in handcuffs, although he was no threat to them or
21 anyone else. Plaintiff did not consent to this treatment and it was not excused by
22 circumstance or by law. This conduct caused Plaintiff emotional distress and
23 humiliation.

24 16. The aforementioned acts of the individual Defendants were willful,
25 wanton, malicious and oppressive and undertaken with conscious disregard of the
26
27
28

1 rights of Plaintiff entitling Plaintiff to exemplary and punitive damages in an amount
2 appropriate to punish or set an example of Defendants for the public good.

3 WHEREFORE, Plaintiff prays relief and judgment as set forth herein.
4

5 THIRD CAUSE OF ACTION
6 California Civil Code §52.1(b)
(CLIFFORD and DOES 1 – 25)

7 17. Plaintiff hereby incorporates paragraphs 1 through 16 by reference, as
8 though fully set forth herein.
9

10 18. The conduct of Defendants, as described herein, interfered with
11 Plaintiff's enjoyment of his rights under the constitution of the state of California,
12 including his right to be free from violence or the threat of violence. Under the
13 provisions of the Civil Code, Defendants are liable for exemplary damages and for
14 twenty-five thousand dollars (\$25,000) in addition thereto for each offense, and for the
15 payment of plaintiff's attorney fees.
16

17 19. As a proximate result of defendants' wrongful conduct, Plaintiff
18 suffered violations of his constitutional rights and sustained damages.

19 WHEREFORE, plaintiff prays for relief as set forth herein.

20 FOURTH CAUSE OF ACTION
21 Intentional Infliction of Emotional Distress
(CLIFFORD and DOES 1 – 25)

22 20. Plaintiff hereby incorporates paragraphs 1 through 19 by reference as
23 though fully set forth.
24

25 21. Defendants intended to shoot in the direction of plaintiff and handcuff
26 Plaintiff and knew, or had reason to know that such conduct would cause Plaintiff
27 severe emotional distress and it did in fact cause Plaintiff severe emotional distress,
28 mental anguish and humiliation.

1 22. The aforementioned acts of the individual defendants were willful,
2 wanton, malicious and oppressive and undertaken with conscious disregard of the
3 rights of Plaintiff entitling Plaintiff to exemplary and punitive damages in an amount
4 appropriate to punish or set an example of defendants for the public good.

5 WHEREFORE, plaintiff prays relief and judgment as set forth herein.

6 FIFTH CAUSE OF ACTION
7 False Imprisonment/Illegal Detention
8 (CLIFFORD and DOES 1 – 25)

9 23. Plaintiff hereby incorporates paragraphs 1 through 22 by reference as
10 though fully set forth.

11 24. Defendants restrained plaintiff, without just cause, when they placed
12 him in handcuffs against his will prior to placing him under arrest and transporting to
13 jail and further by causing his confinement in jail.

14 25. The aforementioned acts of the individual defendants were willful,
15 wanton, malicious and oppressive and undertaken with conscious disregard of the
16 rights of plaintiff entitling plaintiff to exemplary and punitive damages in an amount
17 appropriate to punish or set an example of defendants for the public good.

18 26. Plaintiff was required to retain counsel to redress the wrongful conduct
19 by defendants alleged herein and is consequently entitled to an award of reasonable
20 attorney's fees.

21 WHEREFORE, plaintiff prays relief and judgment as set forth herein.

22 SIXTH CAUSE OF ACTION
23 Negligence
24 (CLIFFORD and DOES 1 – 25)

25 27. Plaintiff incorporates paragraphs 1 through 26 by reference, as though
26 fully set forth.

1 28. At all times herein mentioned, defendants were subject to a duty of care,
2 to avoid causing unnecessary physical harm and distress to citizens in the exercise of
3 the police function. The conduct of defendants, as set forth herein, did not comply
4 with that standard of care, proximately causing plaintiff to suffer damages as set forth
5 herein.
6

7 WHEREFORE, plaintiff prays for relief as set forth herein.

8 **JURY DEMAND**

9 29. Plaintiff demands that a jury try this matter.

10 **PRAYER**

11 WHEREFORE, plaintiff prays for relief as follows.

- 12 1. special damages in an amount to be ascertained according to proof;
13 2. general damages to be proven;
14 3. statutory penalties;
15 4. punitive damages against individually named defendants in an amount
16 sufficient to punish their conduct and to set an example such that similar
17 conduct is abated and/or deterred;
18 5. reasonable attorney's fees;
19 6. costs of suit incurred herein; and
20 7. such other and further relief as the Court may deem just and proper.
21
22

23 Dated: April 21, 2014

LAW OFFICES OF JOHN L. BURRIS

24
25
26 By: _____
 John L. Burris, Esq.
27 Attorneys for L.W., a minor
28